

**FEDERAL RESERVE BANK
OPERATING CIRCULAR NO. 5
Effective June 1, 2002**

ELECTRONIC ACCESS

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1.0 GENERAL

1.1 INTRODUCTION

This operating circular [Circular] sets forth the terms under which an Institution may access certain services provided by a Reserve Bank, and under which an Institution may send certain data to or receive certain data from a Reserve Bank, by means of electronic connection(s).

For purposes of this Circular:

(a) **Access Control Feature** means the software, encryption keys, logon identifications ("logon Ids"), passwords, smart cards, digital certificates ("Certificates"), and other security measures that an Institution uses for access, authentication or authorization with regard to a Reserve Bank's services.

(b) **Electronic Connection** refers to a communication facility used to exchange data between an Institution's computer(s) (which term includes computer and facsimile terminal(s)) and a Reserve Bank's, computer(s). The term includes but is not limited to an Internet or extranet connection, and a connection for which access, authentication, or authorization is controlled by use of one or more Access Control Features.

(c) **Institution** means a depository institution or other authorized institution or entity.

(d) **Reserve Bank** means any Federal Reserve Bank.

(e) **Software** means all software, including upgrades and modifications, in object code only, including third party software, that a Reserve Bank provides to an Institution for the purpose of accessing a Reserve Bank's services.

1.2 ELECTRONIC ACCESS SERVICES

Services (**Electronic Access Services**) which may be accessed using an Electronic Connection include, for example:

- a transfer of funds and/or securities;
- commercial and/or governmental automated clearing house transactions;

- electronic presentment of checks;
- notification of nonpayment of checks;
- an order for cash and/or savings bonds;
- a bid for Treasury securities or Treasury investments;
- receipt of data (such as check information, federal tax payment advices, and statements of account) sent by a Reserve Bank; and
- transmission of data (such as check information, statistical/financial reports and Treasury Tax and Loan reports) by an Institution to a Reserve Bank.

A Reserve Bank may from time to time offer other services using an Electronic Connection.

If an Institution submits statistical or regulatory reports to a Reserve Bank by an Electronic Connection, the Institution must use electronic submissions exclusively, unless it is unable to do so and it notifies the Reserve Bank prior to submitting data by other means. The Institution must maintain a hard copy duplicate of all required statistical or other information (such as FR 2900) that it submits electronically. The duplicate must contain an official signature certifying that the information contained therein is correct, must be retained by the Institution for at least five years, and is subject to inspection by the Reserve Bank, by the Institution's primary regulator, and (for TT&L reports) by the Treasury Department.

1.3 OTHER CIRCULARS; INSTITUTION'S AGREEMENT

Each Reserve Bank has issued a Circular identical to this one. In the event of any inconsistency between this Circular and any other Reserve Bank operating circular, agreement, or instruction governing particular types of transactions, such other operating circular, agreement or instruction controls. By accessing any services from a Reserve Bank, or by sending data to or receiving data from a Reserve Bank, by means of any Electronic Connection, an Institution agrees to the provisions of this Circular, including any Certification Practice Statement ("CPS"), as each may be amended from time to time, applicable to the Electronic Connection(s) and Electronic Access Service(s) that the Institution uses. The Institution also agrees to the provisions of any separate agreement

governing the use of a service, and agrees that any such agreement may be posted and agreed to purely in electronic form. The current version of any CPS may be accessed at the Federal Reserve Financial Services website at www.frbfinancialservices.org, or such other location as Reserve Bank may designate, and is incorporated in this Circular by reference.

1.4 PRIOR APPROVAL FOR ELECTRONIC CONNECTIONS

A Reserve Bank's prior written approval may be required before an Institution uses an Electronic Connection to access any of the Reserve Bank's services or to send any data to the Reserve Bank.

A Reserve Bank's prior written approval is required before:

(a) an Institution shares the use of an Electronic Connection with another institution, has any other party act as its agent in sending or receiving transfers or other messages; or

(b) an Institution sublicenses, assigns, delegates or transfers to a third party any of its rights, duties or obligations under this Circular.

2.0 PARTICIPANT'S EQUIPMENT AND SOFTWARE

2.1 HARDWARE/SOFTWARE

An Institution is responsible for ensuring that its computer(s) and associated equipment and software comply with Reserve Bank requirements (which a Reserve Bank may change from time to time) and for maintaining its own equipment. The Reserve Banks reserve the right to approve or disapprove the use of an Institution's equipment and software, and/or to make recommendations regarding the equipment and software that the Institution uses. THE RESERVE BANKS DO NOT HAVE ANY OBLIGATION FOR AND DO NOT MAKE ANY WARRANTY OR REPRESENTATION OF ANY KIND WITH RESPECT TO ANY COMMUNICATION FACILITY, NETWORK, BROWSER, OPERATING SYSTEM, SERVER, OR ANY OTHER EQUIPMENT OR SOFTWARE NOT SUPPLIED, OWNED OR OPERATED BY A RESERVE BANK.

3.0 COMMUNICATION LINES

3.1 AVAILABLE ELECTRONIC CONNECTION LINES

An Institution may choose from certain Electronic Connections that a Reserve Bank makes available and/or that a Reserve Bank allows an Institution to use to connect to a Reserve Bank's Electronic Access Services. A Reserve Bank reserves the right to specify the type of Electronic Connection necessary to support the volume and type of an Institution's transactions.

4.0 RESERVE BANK-SUPPLIED EQUIPMENT AND SOFTWARE; WARRANTIES; DISCLAIMER OF WARRANTY

4.1 EQUIPMENT DELIVERY, INSTALLATION, REPAIR, ALTERATIONS

A Reserve Bank may arrange for the delivery and installation of equipment necessary for electronically connecting an Institution's computer(s) to a Reserve Bank's computer(s) (such as equipment provided for Frame Relay connections), including the delivery and installation of Reserve Bank equipment.

A Reserve Bank will repair or replace as soon as practicable any Reserve Bank equipment that malfunctions. Reserve Bank equipment may not be altered, encumbered, relocated, removed or transferred to a third party, except with the Reserve Bank's prior written approval. The Institution is liable for any loss of and damage to the Reserve Bank's equipment, ordinary wear and tear excepted.

4.2 ELECTRONIC CONNECTION TO NETWORK; SOFTWARE

A Reserve Bank provides, on request and where appropriate, either Computer Interface Protocol Specifications, product specifications, or Software (including documentation) to enable an Institution's computer to connect to a Reserve Bank's network. The Reserve Bank may provide one copy of the Software for each computer directly connected to a Reserve Bank's network, and one copy for each terminal used for data entry and export to a computer directly connected to a Reserve Bank's network. A Reserve Bank may supply Access Control Feature(s), and other documentation (including user manuals), and may provide training to an Institution's employees in the use of the Software.

4.3 SOFTWARE LICENSE

In the event a Reserve Bank provides Software to an Institution, it grants the Institution a personal, nontransferable, nonexclusive license to use the Software solely for the purposes stated in this Circular. The Reserve Bank warrants that it has the right to license or sublicense the Software, and the Reserve Bank shall indemnify and hold the Institution harmless from any loss or expense arising from any claim that the Software infringes a patent, copyright, trademark or other proprietary right of any third party, provided the Reserve Bank is given prompt written notice of the claim, has sole control of the defense of the claim and of any settlement negotiations, and the Institution cooperates fully with the Reserve Bank in the defense and negotiations. In the event of a claim that the Software infringes any third party proprietary right, the Reserve Bank reserves the right in its sole discretion to (a) replace the Software with a noninfringing product, (b) modify the Software to avoid the infringement, (c) obtain a license for the Institution to continue use of the Software, or (d) terminate the Institution's use of the Software.

4.4 ELECTRONIC CONNECTION RESTRICTIONS

An Institution may not, except with a Reserve Bank's prior written consent:

- (a) modify, add to, translate, reverse assemble, reverse compile, decompile or otherwise attempt to derive the source code from the Software;
- (b) use the Software other than on a computer(s) used for access to a Reserve Bank's network, or on a terminal(s) used for entry of data which is to be exported to such a computer; all such computers and terminals should be located on the Institution's premises (with the exception of computers and terminals located at third party vendor contingency sites where Institution personnel will be present and be operating the systems);
- (c) copy, sublicense or transfer the Software except for use consistent with subparagraph (b) and except for back-up, testing or archival purposes; all copies shall include the Reserve Bank's copyright, trademark and proprietary notices externally in the distribution medium and internally in machine-readable form; or,

- (d) remove any copyright or trademark notice contained in the Software.

4.5 DISCLAIMER OF WARRANTY

Reserve Bank equipment and Software (including documentation), and any Access Control Feature, Electronic Connection, Electronic Access Service, recommendation, security procedure, operating instruction, user manuals, guideline and specifications for interconnection that a Reserve Bank specifies, are furnished strictly on an "as-is" basis. The Reserve Banks do not warrant or represent that operation of their equipment or Software, or use of an Electronic Connection or of Electronic Access Services, will meet an Institution's planned applications, that Reserve Bank equipment or Software will be compatible with an Institution's equipment, or that all equipment or Software defects can be corrected. The Reserve Banks do not warrant or represent that use of an Electronic Connection or of Electronic Access Services, regardless of whether used in conjunction with any Access Control Features and/or in compliance with any recommendation, security procedures, operating instructions, user manual, , guidelines, other documentation, and specifications for interconnection that a Reserve Bank specifies, will be uninterrupted, free from interception, timely, secure, or error free.

A Reserve Bank's sole obligation in the event of a malfunction in Reserve Bank equipment or Software is to provide a remedy in the form of either providing reasonable assistance in resolving problems or replacing defective or damaged equipment or Software that an institution returns to the Reserve Bank. The Reserve Bank shall have sole authority to select the form of the remedy to satisfy that obligation, if any.

A Reserve Bank shall have no obligation for equipment or software that is purchased by the Institution from a third party vendor, even if the Reserve Bank requires the use of that equipment or software or arranges for the purchase from said vendor.

THE OBLIGATIONS AND THE WARRANTY SET FORTH IN THIS PARAGRAPH AND IN PARAGRAPH 4.3 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY OTHER WARRANTY ARISING BY

STATUTE OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

4.6 UNAUTHORIZED DISCLOSURE OR USE OF SOFTWARE

The Software includes trade secrets and proprietary information of the Reserve Banks and others, which may be copyrighted or patented. Unauthorized disclosure of the Software likely would cause a Reserve Bank immediate and irreparable damage for which there may be no adequate remedy at law. An Institution must treat the Software and documentation as confidential information, protecting it with at least the same degree of care that it uses to protect its own confidential information. An Institution must take all necessary steps to enforce this obligation with its employees and agents. An Institution is responsible for degaussing (demagnetising) hard drives that are no longer in use in order to insure that all Software is deleted. In the event an Institution becomes aware of any unauthorized disclosure or use of the Software, the Institution must immediately notify the Reserve Bank that licensed the Software to the Institution of the unauthorized disclosure or use, and must use its best efforts to prevent further unauthorized disclosure or use. Such notification must be by telephone, with written confirmation to the Reserve Bank.

4.7 RESERVE BANK'S VIRUS PROTECTION

The Software is provided either on diskettes, CD-ROMS or other electronic media or through data transmission facilities. The media have been duplicated by the Reserve Banks or by outside suppliers whom the Reserve Banks believe use equipment protected by commercially reasonable technology to prevent the introduction of viruses and other defects. The Reserve Banks test random samples of diskettes and CD-ROMS obtained from vendors, using virus-detection software that they believe is commercially reasonable. However, it is not feasible for the Reserve Bank to test all such diskettes, CD-ROMS and other electronic media, and the virus-detection software may not detect all viruses or other defects. Reserve Bank data transmission facilities also are protected by what the Reserve Banks believe is commercially reasonable technology to prevent the introduction of viruses and other defects.

4.8 INSTITUTION'S VIRUS PROTECTION

An Institution must take all commercially reasonable precautions to prevent the introduction of a computer virus or other defect that might disrupt the operations of a Reserve Bank's, or other

institutions', computers or software. Certain Software that a Reserve Bank supplies to an Institution to run on a computer, may be incompatible with commercial virus checking software. Accordingly, an Institution may need to use physical or other security measures, other than using commercial virus protection software, on certain computers that contain Access Control Feature(s) or that are otherwise engaged in Electronic Connection(s) with a Reserve Bank.

5.0 RISK AND LIABILITY IN USE OF ELECTRONIC CONNECTIONS

5.1 RESPONSIBILITY FOR ACCESS CONTROL FEATURES

An Institution may use Access Control Features only for authorized access to a Reserve Bank's services. An Institution acknowledges that its Electronic Connection(s) and the Access Control Features can be used to originate funds transfer messages, other value transfer messages and non-value messages. The Institution assumes sole responsibility and the entire risk of use and operation of its Electronic Connection(s) and the Access Control Features. Any Reserve Bank may act on any message that it receives through an Electronic Connection and that it authenticates as the Institution's, using such technical protocols and procedures as the Reserve Bank shall establish in its sole discretion as if the message consisted of a written instruction bearing the manual signature of one of the Institution's duly authorized officers.

5.2 RESERVE BANK LIABILITY

The Reserve Banks are not liable for loss or damage resulting from a problem beyond their reasonable control. This includes, but is not limited to, loss or damage resulting from any delay, error or omission in the transmission of any message to or from an Institution, alteration of any information, instruction or notice sent to or from a Reserve Bank through an Electronic Connection, any third party's interception and/or use of any information conveyed using an Electronic Connection, the services provided by an internet service provider, a virus or other defect received from or introduced by any entity other than a Reserve Bank, or technology provided by a Reserve Bank if the technology was not developed by a Reserve Bank, even if the Reserve Bank requires the use of such technology. Additionally, Reserve Banks are not liable for loss or damage resulting from acts of war, acts of terrorism, acts of God or acts of nature.

Further, the Reserve Banks are not liable for any loss or damage arising from an Institution's use of a Certificate, or from a third party's reliance on a Certificate, for any purposes other than those authorized by a Reserve Bank, the theft or compromise of a private key or the password that protects a private key, whether detected or undetected, the storage of any private keys on an Institution's computer hard drive(s) or other storage device, or any loss caused by a third party's duplication of a private key.

Nothing in this Circular shall be deemed to relieve a Reserve Bank from responsibility for its own failure to exercise ordinary care or to act in good faith. However, a Reserve Bank's liability is strictly limited to damages proximately suffered by the Institution, and does not extend to lost profits, a claim by a third party, or consequential or incidental damages, even if the Reserve Bank has been informed of the possibility of such damages.

5.3 COMPLIANCE WITH RESERVE BANK STANDARDS

An Institution must use the Access Control Features, and must conform to the security procedures, operating instructions, guidelines, and specifications for interconnection that a Reserve Bank specifies from time to time. The Institution is required to implement appropriate physical security as well as management controls to protect the Access Control Features, Software, computer(s) and any associated equipment that are used to exchange data with a Reserve Bank from unauthorized use. THE RESERVE BANKS MAKE NO WARRANTIES WITH RESPECT TO THE FOREGOING OR OTHERWISE IN CONNECTION WITH THE USE OF AN ELECTRONIC CONNECTION, EXCEPT AS SET FORTH IN THIS CIRCULAR.

5.4 CONFIDENTIALITY OF RESERVE BANK SECURITY PROCEDURES

Except for any security procedures that a Reserve Bank may publish, an Institution must keep the Access Control Features and security procedures confidential and not disclose them to third parties, or to the Institution's employees except on a "need to know" basis. An Institution must notify the Reserve Bank(s) with which it has an Electronic Connection immediately by telephone, with written confirmation, of any suspected fraud, infringement, or security breach relating to the Institution's Electronic Connection(s).

5.5 MANAGEMENT OF ELECTRONIC CONNECTIONS

An Institution must manage its Electronic Connection(s) so as to permit the Reserve Banks to send transfers and messages to the Institution, and to permit the Institution to receive transfers and access messages from the Reserve Banks, on a timely basis throughout the day. A Reserve Bank is not responsible for any delay in sending a transfer or other message to an Institution (or for notifying any party of such a delay), if the delay results from the Institution's failure to so manage its connection(s), or from any cause other than the Reserve Bank's failure to exercise ordinary care or to act in good faith.

5.6 CONTINGENCY PLANS FOR DISRUPTION OF ELECTRONIC CONNECTIONS

Problems with hardware, software, or data transmission may on occasion delay or prevent a Reserve Bank from sending or receiving payments or other data electronically. Accordingly, an Institution should be prepared to send or receive payments or other data by other means.

6.0 FEES AND TAXES

6.1. ELECTRONIC ACCESS SERVICE FEES

A Reserve Bank's fees for Electronic Access Services (including, for example, installation support, training and connection) are published separately and are subject to change on thirty (30) calendar days' advance notice. A Reserve Bank [or an Institution's Administrative Reserve Bank ("ARB"), if different] charges these fees to the Institution's (or its correspondent's) account on the Reserve Bank's (or the ARB's) books.

6.2 OFF-LINE FEES DUE TO EQUIPMENT FAILURE

If, because of a failure of an Institution's equipment, either a Reserve Bank or the Institution reverts to an off-line procedure, the Reserve Bank may charge off-line fees to the Institution.

6.3 LIABILITY FOR TAXES

An Institution is liable for the payment of any taxes, however designated, levied on its possession or use of equipment, services

or Software a Reserve Bank has supplied, including, without limitation, state and local sales, use, value-added and property taxes.

7.0 TERMINATION AND AMENDMENT

7.1 TERMINATING THE ELECTRONIC ACCESS AGREEMENT

An Institution may terminate its agreement to use Reserve Bank Services through an Electronic Connection and its agreement to the terms of this Circular by giving not less than thirty (30) calendar days' advance written notice to the Reserve Bank(s) with which it has Electronic Connections. A Reserve Bank may terminate an Institution's authority to use an Electronic Connection on similar notice. In addition, a Reserve Bank immediately may terminate the services provided to an Institution hereunder if the Reserve Bank, in its sole discretion, determines that the Institution's continued use of the services poses a risk to the Reserve Bank or others or the Reserve Bank believes that the Institution is in violation of this Circular.

7.2 RETURN OF RESERVE BANK EQUIPMENT AND SOFTWARE; SURVIVAL

Upon termination an Institution promptly must (a) disable (by removing the battery) any encryption card, or other card that supports encryption and communication, but only after the workstation has been disconnected from production network connections; (b) return all Reserve Bank-supplied equipment (or properly dispose of it, if a Reserve Bank authorizes it to do so); (c) destroy the Software (including documentation); (d) delete any installed copies of such Software; and (e) upon request of a Reserve Bank, provide written certification that the Software has been destroyed and deleted. Notwithstanding the foregoing, the Reserve Bank retains the right to require that an Institution promptly return the Software and documentation upon termination. The Institution's obligations pertaining to confidentiality, nondisclosure and cooperation with a Reserve Bank's defense of any Software infringement claim survive any termination of the Institution's agreement to this Circular.

7.3 AMENDMENT OF CIRCULAR

The Reserve Banks may amend this Circular at any time without prior notice. Any amendment applies immediately upon the effective date of the amendment.

8.0 FORUM, GOVERNING LAW AND TIME FOR ACTIONS

8.1 FORUM, GOVERNING LAW AND TIME FOR ACTIONS

The exclusive forum for any action involving a Reserve Bank for that Reserve Bank's acts or omissions arising under this Circular is in the United States District Court and Division where the head office of the Reserve Bank that committed the alleged act or omission is located. No action or claim relating to this Circular may be instituted more than one year after the event giving rise to such action or claim. This Circular is governed by Federal law and, to the extent not inconsistent therewith, the law of the State in which said Reserve Bank's head office is located, excluding that State's law regarding conflicts of law.

9.0 EFFECT OF THIS CIRCULAR ON PREVIOUS CIRCULAR

9.1 EFFECTIVE DATE

This Circular amends and supersedes Operating Circular 5 dated January 2, 1998, as amended October 1, 2000, and shall be effective June 1, 2002.